IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5261 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKNAT D MAKWANA & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Petitioner(s) : 1 - 3.
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR MI PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/04/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners who are serving as a daily wager in the respondent No.3

– Nagar Palika have prayed for an appropriate writ, direction and/or order directing the respondents to confirm them in the permanent post of labourer from the date of their joining and to give them all the benefits as per the rules and regulations.

2. The only submission made on behalf of the respective petitioners is that all the petitioners are working / serving as a daily wager since more than five years and their services are required and inspite of the fact that the work is available and they are continued as daily wagers, are not made permanent and therefore, considering their long services, they are required to be made permanent on regular establishment and are required to be paid all the benefits, which are available to the permanent employees.

3. The petition is opposed by the respondents. An affidavit in reply is filed on behalf of the respondent No.3 – Nagar Palika. It has been

submitted that the petitioners were and are employed on and off as daily wagers for carrying out temporary works of the Nagar Palika. It is submitted that as and when the work was available, they were called for duties as daily wagers. The relevant statement showing the number of days worked by the respective petitioners is also annexed with the affidavit in reply. It is further submitted that whenever the petitioners were called for daily work, they were paid minimum wages payable to the workers under the Minimum Wages Act. It is further submitted that the petitioners are not regular employees. It is also further submitted that the post in respect of which the petitioners seek permanent posting are Class – IV posts of the Municipality and they are bound by the principle of reservation of the posts for S.C., S.T., Physical Handicapped, OBC, etc. It is also further submitted that number of permanent posts in Class – IV in its various departments are determined and fixed by the State Government and there are no vacant sanctioned posts available

on which the petitioners can be made permanent. It is also further submitted that the petitioners cannot be given any permanent benefit of regularization of the posts, etc., without the sanction of the Government. Therefore, it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. The only contention on behalf of the petitioners in support of their claim for permanent posts and/or granting the permanent benefits is their long continuous service as daily wagers. It is not the case of the petitioners that they were appointed on regular establishment after following due procedure of selection. Thus, the appointment of the petitioners can be said to be back door entry. Even otherwise, considering the statement annexed with the affidavit in reply showing the working days of the respective petitioners, the claim of the petitioners that

they are continuously working since 1991 is not made out. It appears that as and when the work was available the petitioners were called as daily wagers and were paid the wages, which are required to be paid to the daily wager under the provisions of the Minimum Wages Act. Mere long continuance as a daily wagers itself is no ground to claim appointment on permanent basis on permanent posts, more particularly, when the appointment of the petitioners even as daily wagers were not after following due procedure of selection. It is also not the case on behalf of the petitioners that there are sanctioned vacant permanent posts. Thus, when there are no sanctioned vacant permanent posts, the petitioners request for regularization and making them permanent cannot be granted. At this stage, the judgment of the Honourable Supreme Court in case of ***Secretary, State of Karnataka & Umadevi & Ors.*** reported in **2006 (4) SCC 1** is required to be referred to. The Honourable Supreme Court in the aforesaid decision has refused to grant relief with regard to

regularization on permanent posts merely on the ground of long continuance working. Thus, considering the decision of the Honourable Supreme Court in case of ***Secretary, State of Karnataka & Umadevi & Ors.*** (supra) as well as the facts and circumstances of the present case, as narrated hereinabove, the petitioners are not entitled to any relief as prayed for in the petition with regard to regularization and making them permanent on permanent posts.

6. For the reasons stated above, the petition fails. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.

[M.R.Shah, J.]

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